

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0263P

Income Tax

For the Calendar Year 2000

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ISSUE

I. **Tax Administration** – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the negligence penalty.

STATEMENT OF FACTS

The negligence penalty was assessed on the non-filing of an amended Indiana income tax return for the calendar year 2000.

The taxpayer is an individual residing in Indiana.

I. **Tax Administration** – Penalty

DISCUSSION

The taxpayer argues the late penalty should be abated as the original tax was paid with the original return.

The taxpayer was audited by the IRS where a Revenue Agent Report was issued on October 1, 2003. The taxpayer did not file an amended Indiana income tax return to reflect the Federal assessment. The Department assessed the taxpayer on information received from the IRS.

Indiana Code 6-3-4-6(a) states a taxpayer must file an amended income tax return within 120 days when a federal modification is incurred.

45 IAC 15-11-2(b) states, “Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties as the taxpayer did not file an amended income tax return within the 120 day period after the issuance of the Federal Revenue Agent Report. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

FINDING

The taxpayer's penalty protest is denied.